

Jul 11, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM M. JULIAN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

2:19-cv-176-SAB

**ORDER TO PROCEED IN
FORMA PAUPERIS AND
ORDER SUMMARILY
DISMISSING HABEAS
PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this pro se Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. Because it appears Petitioner lacks sufficient funds to prosecute this action, his request to proceed in forma pauperis is granted and this action may proceed without payment of the filing fee.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the

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1 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d
2 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of
3 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

4 Petitioner acknowledges his error and submitted a Motion to Substitute
5 Respondent, ECF No. 7. Based on the disposition of this action, however, the Motion
6 will be denied as moot.

7 **EXHAUSTION REQUIREMENT**

8 Petitioner challenges his 2015 Spokane County jury conviction for two counts
9 of first degree child molestation and communication with a minor for immoral
10 purposes. He was sentenced to life without parole. Petitioner indicates that he
11 appealed his conviction to the Washington State Court of Appeals but did not seek
12 review in a higher state court. ECF No. 1 at 2.

13 In his grounds for relief, Petitioner argues that the State of Washington has no
14 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long
15 been settled that state courts are competent to decide questions arising under the U.S.
16 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the
17 state court, as much as it is that of the federal courts, when the question of the validity
18 of a state statute is necessarily involved, as being in alleged violation of any
19 provision of the federal constitution, to decide that question, and to hold the law void
20 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805
21 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal
22 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments
23 to the contrary lack merit.

24 Additionally, before a federal court may grant habeas relief to a state prisoner,
25 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
26 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
27 a prisoner give the state courts an opportunity to act on his claims before he presents
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1 those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
2 petitioner has not exhausted a claim for relief so long as the petitioner has a right
3 under state law to raise the claim by available procedure. *See Id.*; 28 U.S.C. §
4 2254(c).

5 To meet the exhaustion requirement, the petitioner must have “fairly
6 present[ed] his claim in each appropriate state court (including a state supreme court
7 with powers of discretionary review), thereby alerting that court to the federal nature
8 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
9 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
10 the factual or legal bases for that claim and by alerting the state court “to the fact
11 that the ... [petitioner is] asserting claims under the United States Constitution.”
12 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
13 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
14 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

15 Furthermore, to fairly present a claim, the petitioner “must give the state
16 courts one full opportunity to resolve any constitutional issues by invoking one
17 complete round of the State's established appellate review process.” *O'Sullivan*,
18 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
19 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
20 (1971). It appears from the face of the Petition and the attached documents that
21 Petitioner has not exhausted his state court remedies as to each of his grounds for
22 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
23 court remedies.

24 **GROUND FOR FEDERAL HABEAS RELIEF**

25 Petitioner asserts that the Washington state constitution contradicts the federal
26 constitution regarding the Fifth Amendment right to “presentment or indictment of
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1 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
2 his arrest, conviction and imprisonment illegal.

3 Petitioner seems to argue that because the state courts have defied “federally
4 established procedures and processes for the adjudication of crimes” only “a court
5 of federal jurisdiction” has jurisdictional authority over his claims. His bald
6 assertion that “due process of the law was ignored” is unsupported by his factual
7 allegations.

8 The United States Supreme Court stated long ago: “Prosecution by
9 information instead of by indictment is provided for by the laws of Washington.
10 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277
11 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the contrary presented
12 in his four grounds for federal habeas relief are legally frivolous.

13 Because it plainly appears from the petition and accompanying documents
14 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,
15 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases
16 in the United States District Courts.

17 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
18 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
19 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
20 taken in good faith, and there is no basis upon which to issue a certificate of
21 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
22 appealability is therefore **DENIED**.

23 **DATED** this 11th day of July 2019.



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28 Stanley A. Bastian
United States District Judge